



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 33 OF 2017

BETWEEN

CHARLES CHOKHA (suing as Administrator of the estate

Of CHINSISI CHOKHA, deceased) CLAIMANT

AND

ROBERT NYAMBALO 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Kusiwa, of Counsel for the Plaintiff

Chipembere, of Counsel for the Defendant,

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendants claiming damages for loss of expectation of life, loss of dependency, and costs of the action. Consent Judgment on liability against the defendants was entered on 9th October, 2017.

I must thank Counsel for the claimant for the authorities on assessment of damages which were useful to this court.

The Evidence

The claimant is a beneficiary of the estate of Chinsinsi Chokha, deceased. The deceased was involved in an accident on 12th August, 2016. She died as a result of the accident. At the time of the accident, the deceased was aged 5 years.

The deceased is survived by the claimant, his mother and sibling. At the time of his death the deceased was enjoying good health and his loss was loss of hope to the entire family. The deceased's family was depending on the deceased for company. He used to do some chores around the house. The family used to send him on some short errands. The deceased was a schoolboy at Pentecost Church Private Primary School and was at reception class. The family had expectation that the deceased would, after finishing his education or in the future, support his family financially.

General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, considers the time the awards were made and currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved. In **Renzo Benetollo v Attorney General and National**

Insurance Co. Ltd Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

Loss of Expectation of Life

Damages for loss of expectation of life are claimable by a claimant where his injuries have reduced his expectation of life – **Flint v Lovell** (1935) 1 KB 354. They are extended to actions which have survived for the benefit of the deceased's estate and is thus available to the personal representatives of his estate.

In assessing the damages, the thing to be valued is not the prospect of length of days but of a predominantly happy life- **Venham v Gambling** [1919] AC 157. The damages are supposed to be modest and the sum is supposed to be conventional one – **Chikoti v Attorney General** [2006] MWHC 28. In **Jabulani Mbesa [on his behalf and on behalf of dependents of Mrs. Neles Linly Mbesa (deceased)]** Personal Injuries Cause No. 117 of 2014 the deceased died aged 59 years. The court made an award of K900,000.00 as damages for loss of expectation of life.

The claimant lost his son as a result of the accident. The deceased had lived a predominantly happy life with his family. The claimant and other dependants of the deceased have been deprived the enjoyment of such a life. In view of the decided cases herein cited, and in view that the awards were made some time back, I award the claimant a sum of K1,500,000.00 as damages for loss of expectation of life.

Loss of Dependency

The foremost thing in this head is the amount of dependency. That is ascertained by deducting from the wages earned by the deceased the estimated amount of his own personal and living expenses. In Malawi this is estimated at a third of the deceased's income - **Chikoti v Attorney General** (supra). Where the deceased's monthly income is unascertained, the court awards a sum equivalent to what a domestic worker earns – **Kenson Shapu v NICO General Insurance Company Limited** Civil Cause Number 222 of 2007 (unreported). In calculating the damages, courts use the multiplicand and multiplier formula. The multiplicand is a figure representing the deceased's monthly earnings while the multiplier is the figure

representing the estimated number of years the deceased would have lived if not for the wrongful death. The product of the multiplicand and the multiplier is multiplied by 12 representing the number of months in a year.

The difficulty arises when the deceased is a child of tender age. In **Samuel Chawanda on behalf of M. Chawanda (Deceased) and Other Dependents v the Attorney General** Civil Cause No. 3556 of 2002 the court stated that

“The obvious difficulty herein is that the deceased could not be employed due to his tender age which then has an implication on his earning capacity and consequently on the dependency on him by the plaintiff and others herein. But this state of affairs does not mean that an award for loss of dependency cannot be made.”

In this case the deceased died aged 12 years. The court adopted the domestic servants’ minimum wage as the multiplicand.

The World Health Organization puts the life expectancy for males in Malawi at 56.7 years - www.worldlifeexpectancy.com/malawi-life-expectancy. The court takes into account the fact that there would have been other factors that would have shortened the deceased’s life.

The deceased was aged 5 years at the time of his death. He might have lived into his 50s had he not died. I have regard to the statistics on life expectancy in Malawi that pegs it to around the range of 56.7 years for men. The deceased possibly had around 51 more years to live had it not been for his death. That figure of 51 years shall be reduced to cater for eventualities of life that may have reduced his life expectancy in any event. I make a reduction of 18 years and so adopts the multiplier of 38. I adopt the approach in **Chawanda on behalf of M. Chawanda (Deceased) and Other Dependents v the Attorney General** (supra). The minimum wage or domestic worker’s earnings which is K25,012.00 would be used as a multiplicand since there is no evidence as to how much the deceased was earning. The award under this head would, therefore, be $K25,012.00 \times 12 \times 38 \times \frac{2}{3}$ which is K7,603,648.00.

Conclusion

The claimant is awarded a total sum of K9,103,648.00 as damages. The claimant is also awarded costs of the action.

Pronounced in court this 13th day of July, 2018 at Blantyre.



E. BODOLE (MRS)

ASSISTANT REGISTRAR